



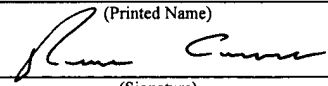
05-28-04

DT07 Rec'd PCT/PTO <sup>26</sup>~~28~~ MAY 2004

Atty. Dkt. No. 355908-2650  
**Rec'd PCT/PTO 26 MAY 2004**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: David ELSLEY  
Title: COMBINED THERAPIES FOR  
ATHEROSCLEROSIS TREATMENT  
Appl. No.: 10/089,362  
Filing Date: September 25, 2000  
Examiner: Not Yet Assigned  
Art Unit: Not Yet Assigned

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 464448543 US	May <sup>26</sup> <del>28</del> , 2004
(Express Mail Label Number)	(Date of Deposit)
Rene Campos	
(Printed Name)	
	
(Signature)	

**TRANSMITTAL**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Request to Withdraw Incorrect Notice of Abandonment and Alternative Condition to Revive in the above-identified application.

- ☒ Exhibit A (Copy or Response to Missing Parts as filed January 14, 2003).
- ☒ Exhibit B (Copy of stamped return receipt postcard).
- ☒ Exhibit C (Detailed Explanation of Delay in Discovering the Abandonment Status).
- ☒ Return Postcard.
- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed

for timely acceptance of papers submitted herewith, applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872. A duplicate copy of this transmittal is enclosed.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date May 25, 2004

FOLEY & LARDNER LLP  
Three Palo Alto Square  
3000 El Camino Real, Suite 100  
Palo Alto, California 94306  
Telephone: (650) 856-3703  
Facsimile: (650) 856-3710

By Gerald F. Swiss

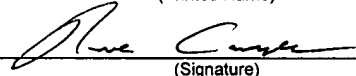
Gerald F. Swiss  
Attorney for Applicant  
Registration No. 30,113



Atty. Dkt. No. 355908-2650

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: David ELSLEY  
Title: COMBINED THERAPIES FOR  
ATHEROSCLEROSIS TREATMENT  
Appl. No.: 10/089,362  
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Examiner: Unknown  
Art Unit: Unknown

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EV 464448543 US (Express Mail Label Number)	May 26, 2004 (Date of Deposit)
Rene Campos (Printed Name)	
 (Signature)	

**REQUEST TO WITHDRAW INCORRECT NOTICE OF ABANDONMENT AND  
ALTERNATIVE CONDITION TO REVIVE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

On May 13, 2004, it came to the attention of my office that a Notice of Abandonment was entered in this application. According to the U.S. Patent and Trademark Office (USPTO) this application became abandoned because applicant allegedly failed to submit papers in response to Notice of Missing Parts on November 22, 2002.

That is not correct.

In fact, the missing parts papers were timely filed with the USPTO on January 14, 2003. A copy of the papers and a copy of the return receipt postcard, as evidence of receipt of these papers by the USPTO, are appended hereto as Exhibits A and B respectively.

Under these circumstances, the understand learned of this abandonment, as set forth above, only days ago. The notice of abandonment was not received by the undersigned at his former law firm, Burns Doane Swecker and Mathis, LLP. A detailed explanation of the delay in discovering the abandoned status is appended hereto as Exhibit C.

Since applicant did satisfy all of the outstanding requirements, it is respectfully submitted that the notice of abandonment should not have been sent.

IN THE EVENT THAT IT IS DETERMINED THAT A PETITION TO REVIVE IS NECESSARY, although that condition is respectfully disagreed with, please consider this paper to be a petition to revive this application as unintentionally abandoned. All delays in filing of this paper were unintentional and inadvertent. Please charge any fees for such petition to **Deposit Account No. 50-0872**. It is believed however that this application should be revived without necessity of this petition in view of the full response previously filed.

Respectfully submitted,

Date 5/25/04

By Gerald F. Swiss

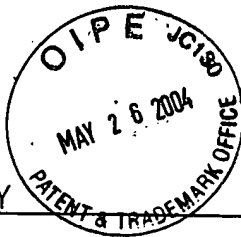
FOLEY & LARDNER LLP  
Three Palo Alto Square  
3000 El Camino Real, Suite 100  
Palo Alto, California 94306  
Telephone: (650) 856-3703  
Facsimile: (650) 856-3710

Gerald F. Swiss  
Attorney for Applicant  
Registration No. 30,113



Attorney Docket No. 355908-2650

# Exhibit A



Inventor: DAVID ELSLEY

Appln. No.: 10/089,363

Filing Date: March 25, 2002

Docket No.: 033136-269

Work Atty.: GFS/mlp

Date: January 14, 2003



The following was/were received in the U.S. Patent and Trademark Office on the date stamped hereon:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Amendment or Response  | <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Certificate Under 37 C.F.R. § 3.73(b) | <input checked="" type="checkbox"/> Check for \$ <u>65.00</u> is enclosed                       |
| <input type="checkbox"/> Preliminary Amendment  | <input checked="" type="checkbox"/> Transmittal Letter for Missing Parts of Application                     | <input type="checkbox"/> Check for \$__ is enclosed   |
| <input type="checkbox"/> Reply Transmittal Letter   | <input checked="" type="checkbox"/> Executed Declaration/Power of Attorney                                  | <input type="checkbox"/> Charge \$__ to Deposit Account   |
| <input type="checkbox"/> Petition for __ Month Extension of Time                                  | <input type="checkbox"/> Assignment/Assignment Recordation Form Cover Sheet (PTO-1595)                      | <input type="checkbox"/> Issue Fee Transmittal  |
| <input type="checkbox"/> Submission of Formal Drawings w/_ sheet(s) of drawings (Fig(s). 1-__)    | <input type="checkbox"/> Claim for Convention Priority w/_ certified copy(s)                                | <input type="checkbox"/> Payment of Issue Fee and Authorization to charge Deposit Account       |
| <input type="checkbox"/> Request for Approval of Drawing Changes w/_ sheet(s) of red ink drawings | <input type="checkbox"/> Information Disclosure Statement w/_ document(s)                                   | <input type="checkbox"/> Request for Refund   |
| <input type="checkbox"/> Notice of Appeal   | <input type="checkbox"/> Information Disclosure Citation (PTO-1449)   | <input type="checkbox"/> Status Inquiry   |
| <input type="checkbox"/> Brief for Appellant  | <input type="checkbox"/> Information Disclosure Statement Transmittal Letter                                | <input type="checkbox"/> Request for Corrected Filing Receipt w/copy of Official Filing Receipt |
| <input type="checkbox"/> Request for Oral Hearing   | <input type="checkbox"/> Request for Corrected Notice of Recordation of Assignment w/copy of Notice         | <input checked="" type="checkbox"/> Return postcard   |
| <input type="checkbox"/> Reply Brief  | <input type="checkbox"/> Request for Continued Examination  | <input type="checkbox"/>  |
| <input type="checkbox"/> Response to Restriction Requirement or Election of Species               |   | <input type="checkbox"/>  |

(10/00)

"DOCKETED"



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	)	
	)	
DAVID ELSLEY	)	Group Art Unit: Unassigned
	)	
Application No.: 10/089,362	)	Examiner: Unassigned
	)	
Filed: March 25, 2002	)	Confirmation No.: 7852
	)	
For: COMBINED THERAPIES FOR	)	
ATHEROSCLEROSIS TREATMENT	)	
	)	
	)	

**TRANSMITTAL LETTER FOR MISSING PARTS OF APPLICATION**

**BOX: MISSING PART**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In complete response to the Notice to File Missing Parts of Application Under 37 C.F.R.  
§ 1.53(b) dated November 22, 2002, enclosed please find:

- ☒ a Combined Declaration and Power of Attorney signed by the inventor(s);
- ☐ Note that the inventor(s) identified on the currently filed Combined Declaration and Power of Attorney is different from those listed on the application filing papers.
- ☒ the surcharge of ☒ \$65.00 (2051) ☐ \$130.00 (1051) as set forth in 37 C.F.R. § 1.16(e);
- ☐ a Request for Refund;
- ☐ a Petition for Extension of Time;
- ☐ a verified English translation of the Application, and the \$130.00 (1053) fee as set forth in 37 C.F.R. § 1.17(k);
- ☐ an Assignment document and a separate check for the \$40.00 (8021) Assignment recordation fee;
- ☐ drawings for publication;
- ☒ other return postcard\_\_\_\_\_;
- ☒ a check in the amount of \$ 65.00 for the fee due for missing parts; and

☐ charge \$ \_\_\_\_\_ to Deposit Account No. 02-4800 for the fee due for missing parts.

☒ Small entity status is hereby claimed.

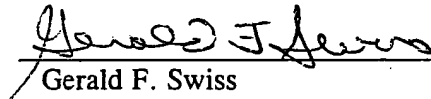
The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 1-13-03

By:

  
Gerald F. Swiss  
Registration No. 30,113

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(650) 622-2300





UNITED STATES PATENT AND TRADEMARK OFFICE

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Page 1 of 2

U.S. APPLICATION NUMBER NO. 10/089,362	FIRST NAMED APPLICANT David Elsley	ATTY. DOCKET NO. 033136-269
INTERNATIONAL APPLICATION NO. PCT/CA00/01112		
LA. FILING DATE 09/25/2000	PRIORITY DATE 09/24/1999	

21839  
BURNS DOANE SWECKER & MATHIS L L P  
POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

CONFIRMATION NO. 7852  
371 FORMALITIES LETTER  
\*OC00000009111213\*

Date Mailed: 11/22/2002

NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- U.S. Basic National Fees
- Priority Document
- Copy of IPE Report
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report

45072 I.C.  
EXSIST/LLT  
BURNS DOANE SWECKER & MATHIS, L.L.P.  
RECEIVED  
20-11-27  
NOV 27 2002  
DOCKETED 11/27 I.C.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.

**ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTH FROM THE DATE OF THIS NOTICE OR BY 22 or 32 MONTHS (where 37 CFR 1.495 applies) FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

A copy of this notice **MUST** be returned with the response.

Missing Docs, etc

DARRELL C COTTMAN

Telephone: (703) 305-3693

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/089,362	PCT/CA00/01112	033136-269

FORM PCT/DO/EO/905 (371 Formalities Notice)

# Exhibit B

Inventor: DAVID ELSLEY

Appln. No.: 10/089,363

Filing Date: March 25, 2002

Docket No.: 033136-269

Work Atty.: GFS/mlp

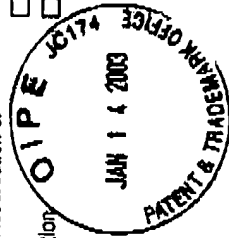
Date: January 14, 2003

172

The following was/were received in the U.S. Patent and Trademark Office on the date stamped hereon:

23

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Amendment or Response   | <input checked="" type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Certificate Under 37 C.F.R. § 3.73(b) | <input checked="" type="checkbox"/> Check for \$ <u>65.00</u> is enclosed                       |
| <input type="checkbox"/> Preliminary Amendment   | <input checked="" type="checkbox"/> Transmittal Letter for Missing Parts of Application                                | <input type="checkbox"/> Check for \$ <u>    </u> is enclosed                                   |
| <input type="checkbox"/> Reply Transmittal Letter  | <input checked="" type="checkbox"/> Executed Declaration/Power of Attorney   | <input type="checkbox"/> Charge \$ <u>    </u> to Deposit Account                               |
| <input type="checkbox"/> Petition for <u>  </u> Month Extension of Time  | <input type="checkbox"/> Assignment/Assignment Recordation Form Cover Sheet (PTO-1595)                                 | <input type="checkbox"/> Issue Fee Transmittal  |
| <input type="checkbox"/> Submission of Formal Drawings w/ <u>  </u> sheet(s) of drawings (Fig(s). 1- <u>  </u> ) | <input type="checkbox"/> Claim for Convention Priority w/ <u>  </u> certified copy(s)                                  | <input type="checkbox"/> Payment of Issue Fee and Authorization to charge Deposit Account       |
| <input type="checkbox"/> Request for Approval of Drawing Changes w/ <u>  </u> sheet(s) of red ink drawings       | <input type="checkbox"/> Information Disclosure Statement w/ <u>  </u> document(s)                                     | <input type="checkbox"/> Request for Refund   |
| <input type="checkbox"/> Notice of Appeal  | <input type="checkbox"/> Information Disclosure Citation (PTO-1449)  | <input type="checkbox"/> Status Inquiry   |
| <input type="checkbox"/> Brief for Appellant   | <input type="checkbox"/> Information Disclosure Statement Transmittal Letter   | <input type="checkbox"/> Request for Corrected Filing Receipt w/copy of Official Filing Receipt |
| <input type="checkbox"/> Request for Oral Hearing  | <input type="checkbox"/> Request for Corrected Notice of Recordation of Assignment w/copy of Notice                    | <input checked="" type="checkbox"/> Return postcard   |
| <input type="checkbox"/> Reply Brief   | <input type="checkbox"/> Request for Continued Examination   | <input type="checkbox"/> <input type="checkbox"/>   |
| <input type="checkbox"/> Response to Restriction Requirement or Election of Species                              |  |   |



(10/00)

*15-missing  
Pacts  
2-check*

*40*

101 AVAILABLE COPY

# Exhibit C

**DETAILED EXPLANATION OF DELAY IN DISCOVERING THE ABANDONED  
STATUS**

(1). A timely Response to the Notice to File Missing Parts and appropriate fee were filed with the U.S. Patent and Trademark Office on **January 14, 2003**.

(2). Applicants received a date stamped return postcard from the U.S. Patent and Trademark Office notifying us that the USPTO had received the Response to Missing Parts on **January 14, 2004**.

(3). On **April 17, 2003**, Applicants' filed Preliminary Amendment with the U.S. Patent and Trademark Office

(4). On **February 26, 2004**, Applicant filed an Information Disclosure Statement with transmittal sheet.

(5). Applicants never received a Notice of Abandonment from the U.S. Patent and Trademark Office.

(6). On **May 13, 2004**, Applicant became aware that a Notice of Abandonment was entered in this application when a review of status of this case was made with the USPTO.